

Local Law #2 of 2008
STORMWATER MANAGEMENT AND EROSION CONTROL LAW
TOWN OF MIDDLESEX, NY

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Section 1: Short Title

This Local Law shall be known as the "*Stormwater Management and Erosion Control Law.*"

Section 2: Findings of Fact

The Town of Middlesex finds that uncontrolled drainage and runoff associated with land development has a significant impact upon the health, safety and welfare of the community. Specifically,

a. Stormwater runoff can carry pollutants into receiving waterbodies, degrading water quality;

b. The increase in nutrients in stormwater runoff such as phosphorus and nitrogen accelerates eutrophication of receiving waters;

c. Improper design and construction of drainage facilities can increase the velocity of runoff thereby increasing streambank erosion and sedimentation;

d. Construction requiring land clearing and the alteration of natural topography tends to increase erosion;

e. Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation, and harms flora and fauna;

f. Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow;

g. Improperly managed stormwater runoff can increase the incidence of flooding and the level of floods that occur, endangering property and human life;

h. Substantial economic losses can result from these adverse impacts on community waters;

i. Many future problems can be avoided if land is developed in accordance with sound stormwater runoff

management practices.

Section 3: Purposes and Objectives

In order to protect, maintain and enhance both the immediate and the long-term health, safety and general welfare of the citizens of the Town of Middlesex, this Law has the following objectives:

a. prevent increases in the magnitude and frequency of stormwater runoff so as to prevent an increase in flood flows and in the hazards and costs associated with flooding;

b. prevent decreases in groundwater recharge and stream base flow so as to maintain aquatic life, assimilative capacity, and potential water supplies;

c. maintain the integrity of stream geometry so as to sustain the hydrologic functions of streams;

d. control erosion and sedimentation so as to prevent its deposition in streams and other receiving water bodies;

e. facilitate the removal of pollutants in stormwater runoff so as to perpetuate the natural biological functions of streams; and,

f. to the extent practical, secure multiple community benefits such as groundwater replenishment, open space protection and increased recreational opportunity through integrated land use-stormwater management planning.

Section 4: Authority

In accordance with Article 9 of the Town Law of the State of New York, the Town of Middlesex has the authority to enact local laws for the purpose of promoting the health, safety or general welfare of the Town of Middlesex. The Town of Middlesex may include in any such local law provisions for the appointment of any municipal officer or employees to effectuate and administer such local law.

Section 5: Jurisdiction

Upon approval of this Law by the Town of Middlesex, all site preparation and construction activities requiring approval under this Law shall be in conformance with provisions set forth herein.

Section 6: Definitions

Unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this Law its most effective application. Words used in the singular shall include the plural and the plural the singular; words used in the present tense shall include the future tense. The word "shall" connotes mandatory and not discretionary; the word "may" is permissive.

Agriculture/Agricultural Activities- The activity of an active farm or use of parceled land in operation and activities including raising of crops, plants, vines, as well as poultry, livestock, dairy or products thereof. However, the construction of new structures that may be associated with agricultural activities should not be included in this definition.

Development- To make a site or area available for use by physical alteration. Development includes but is not limited to providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, and sewage disposal systems, altering landforms, or construction of a structure on the land.

Drywell- Similar to infiltration trench but smaller with inflow from pipe; commonly covered with soil and used for drainage areas of less than 1 acre as roadside inlets and rooftop runoff.

Erosion- The removal of soil particles by the action of water, wind, ice or other geological agents.

Exfiltration- The downward movement of runoff through the bottom of an infiltration system into the soil.

Extended Detention- A practice to store stormwater runoff

by collection as a temporary pool of water and provide for its gradual (attenuated) release over 24 hours or more. A practice which is used to control peak discharge rates, and which provides gravity settling of pollutants.

First Flush- The delivery of a disproportionately large load of pollutants during the early part of storms due to the rapid runoff of accumulated pollutants. The first flush in these guidelines is defined as the runoff generated from a one year 24 hour storm event from land which has been made more impervious from pre-development conditions through land grading and construction/development activities.

Flood Plain- For a given flood event, that area of land temporarily covered by water which adjoins a watercourse.

Forebay- An extra storage area or treatment area, such as a sediment pond or created wetland, near an inlet of a stormwater management facility to trap incoming sediments or take up nutrients before they reach a retention or extended detention pond.

Impervious Area- Impermeable surfaces, such as pavement or rooftops, which prevent the percolation of water into the soil.

Infiltration- A practice designed to promote the recharge of groundwater by containment and concentration of stormwater in porous soils.

Infiltration Basin- An impoundment made by excavation or embankment construction to contain and exfiltrate runoff into the soil layer.

Outfall- The terminus of a storm drain where the contents are released.

Peak flow- The maximum rate of flow of water at a given point and time resulting from a storm event.

Peak Flow Attenuation- The reduction of the peak discharge of storm runoff by storage and gradual release of that storage.

Preliminary Site Plan Review- An informal meeting between the Town Planning Board and the owner or developer to

exchange information related to a proposed land improvement. The meeting includes a presentation of a preliminary drawing or sketch, and a discussion of project scope, location, and schedule, Stormwater Management and Erosion Control Plan Requirements and other general information, following which, the Planning Board shall provide direction to the owner/developer as to subsequent steps necessary to obtain permit approval.

Retention- A practice designed to store stormwater runoff by collection as a permanent pool of water without release except by means of evaporation, infiltration, or attenuated release when runoff volume exceeds the permanent storage capacity of the permanent pool.

Riprap- A combination of large stone, cobbles and boulders used to line channels, stabilize stream banks, reduce runoff velocities.

Riser- A vertical pipe that is used to control the discharge rate from a pond for a specified design storm.

Site Plan- Map(s) or drawn representation of a proposed project or development, sometimes accompanied by written description and/or specifications, containing sufficient information and detail for municipal review and approval.

Site Plan Review- The process by which an applicant, owner and/or developer presents a map(s), drawings and other supporting documentation of a proposed development or project, submitted to the municipal approval authority for consideration and approval, in advance of issuing a permit, and pursuant to the provisions of Section 700 of the Town of Middlesex Zoning Law.

Steep Slope- Any geographical area having a gradient of 15% or greater (ratio of vertical distance to horizontal distance), using a minimum horizontal distance of ten (10) feet, and whether man-made or natural, and whether created by a retaining structure or not. The minimum area being categorized as steep slope shall be 1/10 of an acre (4356 sq. ft. or approx. 65 ft x 65 ft).

Stream Corridor- The landscape features on both sides of a stream, including soils, slope and vegetation, whose alteration can directly impact the streams physical characteristics and biological properties.

Swale- A natural depression or wide shallow ditch used to temporarily route, or filter runoff.

Town Engineer- A professional engineer, registered in the State of New York, used by the Town of Middlesex to perform the appropriate review of technical documents and site conditions, and to provide best practice recommendations and governing code requirements.

Section 7: Applicability

a. It has been established that land cleaning, land grading, earth moving or development activities can have a significant effect on the environment. Therefore, no person, corporation, organization, or public agency shall, on or after the effective date of this Local Law:

1. initiate any land clearing, land grading, earth moving or development activities without first preparing a stormwater management and erosion control plan and obtaining approval of said plan from the Town of Middlesex; or

2. alter any surface drainage system without first preparing a stormwater management and erosion control plan and obtaining approval of said plan from the Town of Middlesex.

b. The above requirements apply when:

1. Such activity results in development affecting 10,000 square feet or more of land, or (amd Local Law #2 of 2008 2/4/08)

2. At least 200 cubic yards of material will be disturbed, or

3. Such activity occurs in a steep slope area and disturbs 500 sq. ft. or more of land or,

4. Such activity is in an area zoned Lake Residential and disturbs 500 sq. ft or more of land.

c. In the case of a single family residence, the approval for a Stormwater Management and Erosion Control Plan shall be granted by the Code Enforcement Officer, except where the area being developed for a single family residence is by definition a steep slope area. The Erosion Control Plans for single-family residence on these parcels shall be reviewed and approved by the Town of Middlesex Planning Board.

d. Exemptions. The following activities are exempt from the Stormwater Management and Erosion Control Plan requirements:

1. Agricultural activities including household gardening;

2. Any maintenance, alteration, use or improvement to an existing structure which will not change the quality, rate, volume or location of surface water discharge or contribute to erosion and sedimentation.

3. Any normal activities performed by State, County or Town Highway and Water Departments.

e. All non-exempt activities will be conducted in accordance with Performance Standards required by Section Ten herein.

Section 8: Contents of Stormwater Management and Erosion Control Plan:

a. It is the responsibility of an applicant to prepare a Stormwater Management and Erosion Control Plan so that the Town of Middlesex Planning Board can evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on community waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing or mitigating adverse impacts.

b. The Stormwater Management and Erosion Control Plan shall contain the name, address, and telephone number of the owner and developer. In addition, the legal description of the property shall be provided, and its location with reference to such landmarks as major waterbodies, adjoining roads, railroads, subdivisions, or

towns shall be clearly identified on a map.

c. The structure and content of the Stormwater Management and Erosion Control Plan will be prepared according to Section 9 Performance Standards of this document.

Section 9: Performance Standards

Stormwater Management and Erosion Control Plans shall be prepared in accordance with the Standards and Specifications for Erosion and Sediment Control, and the NYS Stormwater Management Design Manual. Specific plan contents shall meet the (16) basic SWPPP (Stormwater Pollution Prevention Plans) requirements consistent with the standards of the DEC, and approved as such. Access to these documents can be obtained by the applicant through the NYSDEC or by website: www.dec.ny.gov or Yates County Soil & Water Conservation Services, Inc., Penn Yan, NY.

Section 10: Impact on Site Plan Review

a. A Site Plan Review shall be required whenever an Erosion and Sediment Control Plan is mandated under Section 7. Applicability.

b. During all phases of Site Plan Review, provisions for stormwater management and erosion control shall be considered. There are three phases of Site Plan Review for a project:

1. Pre-submission Phase- which provides an opportunity for the community to learn of the developer's intent and for the developer to learn of the community's requirements and standards for development. This discussion / fact-finding with the developer or applicant shall be listed as an agenda item for the Planning Board.

2. Preliminary Site Plan Review Phase- the definition of this phase is included under Section 6 and includes submission of a draft stormwater management and erosion control plan if required per Section 7. Because it is a preliminary action only, action on the proposal shall be given as tentative approval, tentative approval with modification or disapproval.

3. Final Site Plan Review Phase- during this phase, all necessary documents shall be presented in their final form, to include all comments from earlier phases. The Stormwater Management and Erosion Control Plan shall be in its final form for approval, to include drawing notations and written text with all requested modifications satisfied as part of the final application submission.

c. Review and approval of each phase conducted by the Town of Middlesex Planning Board shall be at a public hearing, if required upon (10) ten days notice in the official town publication.

d. The Stormwater Management and Erosion Control Plan shall not be approved unless it is consistent with the Purposes and Objectives of this Law in Section 3 and the Performance Standards described in Section 9.

Section 11: Inspections

No Stormwater Management and Erosion Control Plan will be approved without adequate provision for inspection of the property before development activity commences. The applicant shall arrange with the Town of Middlesex Code Enforcement Officer for scheduling the following inspections:

1. Initial Inspection: first onsite visit for orientation purposes, prior to the development of the Stormwater Management and Erosion Control Plan;

2. Pre-Construction Erosion Control Inspection: to ensure perimeter erosion control provisions are installed on site prior to the start of construction, in accordance with approved plans.

3. Pre-backfill Inspection: Prior to backfilling of any underground drainage or stormwater conveyance structures;

4. Final Inspection: When all work including construction of permanent stormwater management facilities has been completed.

The Town of Middlesex Code Enforcement Officer shall

inspect the work and either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved Stormwater Management and Erosion Control Plan. Any portion of the work which does not comply shall be promptly corrected by the applicant or the applicant may trigger the bonding provisions of Section 15 and the penalty provisions of Section 16. The Code Enforcement Officer may conduct random inspections to ensure effective control of erosion and sedimentation during all phases of construction.

Section 12: Letter of Completion

After successful completion of all inspections, a final set of "as-built" drawings, properly drafted, locating all major water-bodies, adjoining roads, underground utilities, roadway centerlines, rights-of-way or easements, lot boundaries, and all required permanent storm water management features shall be submitted to the Code Enforcement Officer. Upon acceptance of this final documentation, the Code Enforcement Officer shall then prepare and present a Letter of Completion to the Chair of the Town Planning Board for joint signatures. Upon receipt of this Letter of Completion, the applicant shall be released from any performance bond in force.

Section 13: Fees

Fees shall be set per the Town Fee Schedule. There is no fee for a Preliminary Site Plan Review, however there is a fee for a subsequent Final Site Plan Review. If the Planning Board requires technical assistance from the Town Engineer or an independent certified professional engineer, licensed landscape architect or certified professional in erosion and sediment control during the review process, all costs incurred shall be charged to the permit applicant. An applicant's failure to consent to pay the Town of Middlesex for such services and fees shall constitute a withdrawal of the application (see Town Zoning Law Sect. 700.4.3d)

Section 14: Maintenance

Operation and maintenance of a permanent stormwater management practice or facility ("practice or facility") shall be carried out at all times in accordance with DEC SWPPP standards by the property owner, a

homeowner's association, or the Town of Middlesex.

a. The property owner or homeowner's association shall prepare and file with the Town of Middlesex Code Enforcement Officer an operation and maintenance plan that requires the practice or facility to be operated and maintained in accordance with the plan. The plan shall be approved by the Town of Middlesex Planning Board prior to such filing.

b. The plan shall contain a provision that grants the Town of Middlesex Code Enforcement Officer permission to periodically inspect the practice or facility and if necessary to direct the owner to take corrective action should the owner fail to properly maintain the practice or facility.

c. Alternatively, the property owner-operator or homeowner's association may offer to dedicate the practice or facility to the Town of Middlesex. The Town Board of the Town of Middlesex shall have sole discretion to accept the practice or facility, upon recommendation of the Town of Middlesex Planning Board.

d. If the practice or facility is dedicated to the Town of Middlesex, the owner shall deed such facility and any rights of way to the Town of Middlesex and shall enter into a maintenance agreement with the Town of Middlesex.

e. If operation and maintenance of the practice or facility is to be carried out by a homeowner's association, the homeowner's association shall be registered pursuant to Section #352-e of the *New York General Business Law*.

Section 15: Performance Bond

a. In order to ensure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the Town of Middlesex Planning Board in its approval of the Stormwater Management and Erosion Control Plan, the Town of Middlesex Planning Board may require the developer to provide, prior to construction, a performance bond, escrow account certification, or irrevocable letter of credit from an appropriate financial or surety institution which

guarantees satisfactory completion of the project and names the Town of Middlesex as the beneficiary. A performance bond or similar monetary security shall be required for any area being developed that is classified as steep slope. Any such security shall be in an amount to be determined by the Town of Middlesex Planning Board based on submission of final design plans, with reference to actual construction costs.

b. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Middlesex with an irrevocable letter of credit from an appropriate financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities.

c. Any performance bond or similar monetary security established to guarantee proper construction and maintenance of required temporary and/or permanent stormwater management and erosion control facilities for the project shall remain in force until the surety is released from liability by the Town of Middlesex, provided that such period shall not be less than one year from the date of final acceptance or other such certification that the facility(ies) have been constructed in accordance with the approved plans and specifications, and that a one-year inspection has been conducted by the Town of Middlesex and the facilities have been found to be acceptable.

Section 16: Enforcement

a. Nuisance. Any development activity that is commenced without prior approval of a Stormwater Management and Erosion Control Plan, or is conducted contrary to an approved Stormwater Management and Erosion Control Plan, **or** an approved Operations and Maintenance Plan, as required by this Law, may be restrained by injunction or otherwise abated in a manner provided by law.

b. Civil and Criminal Penalties. In addition to, or as an alternative to, any penalty provided herein or by law, any person who violates the provisions of this Law shall be punished by a fine of not less than (\$300) Three

Hundred Dollars nor more than (\$1000) One Thousand Dollars or by imprisonment for a period not to exceed (60) sixty days, or by both such fine and imprisonment. For each day that a violation continues, this shall constitute a separate violation.

c. Any violator may be required to restore land to its undisturbed condition. In the event that restoration has not begun after 48 hours from receipt of the notice, the Town of Middlesex may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

d. Notice of violation. When the Town of Middlesex Code Enforcement Officer determines that developmental activity is not being carried out in accordance with the requirements of this Law, a Stop Work Order will be issued to the owner of the property identifying the site, citing the violation and providing conditions which must be satisfied before work will be permitted to resume. The Stop Work Order shall contain:

1. the name and address of the owner or applicant;

2. the street address when available or a description of the building, structure, or land upon which the violation is occurring;

3. a statement specifying the nature of the violation;

4. a description of the remedial actions necessary to bring the development activity into compliance with this Law and a time schedule for completion of such remedial action;

5. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

6. a statement that the determination of violation may be appealed to the Town of Middlesex Zoning Board of Appeals by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

e. The Stop Work Order shall be served upon the

person(s) to whom it is directed either personally, in a manner provided for personal service of notices by the court of local jurisdiction, or by mailing a copy of the Stop Work Order by certified mail, postage prepaid, return receipt requested to such person at his or her last known address.

f. A Stop Work Order issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Town of Middlesex Zoning Board of Appeals.

g. An action or proceeding in the name of the Town of Middlesex may be commenced in any court of competent jurisdiction to compel compliance with or restrain violation of this local law or order issued in connection with this local law, and to demand any person or entity violating this local law to return the work site to prior conditions at the expense of owner/applicant.

Section 17: Appeals

Any person aggrieved by the action of any official charged with the enforcement of this Local Law, as the result of the disapproval of a Stormwater Management and Erosion Control Plan, issuance of a written notice of violation, or an alleged failure to properly enforce the Local Law in regard to a specific application, shall have the right to appeal the action to the Town of Middlesex Zoning Board of Appeals. The appeal shall be filed in writing within thirty (30) days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based, and shall be processed in the manner prescribed for hearing administrative appeals under state law.

Section 18: Severability

Each separate provision of this Law is deemed independent of all other provisions herein so that if any provision or provisions of this Local Law be declared invalid, all other provisions thereof shall remain valid and enforceable.

Section 19: Variance

A. The Town of Middlesex Zoning Board of Appeals may grant a written variance from any requirement of this Local Law using the following criteria:

1. There are special circumstances applicable to the subject property or its intended use; and

2. The granting of the variance will not result in:

a. an increase or decrease in the rate or volume of surface water runoff;

b. an adverse impact on a wetland, water course or water body;

c. degradation of water quality; or

d. an adverse effect on any neighboring parcels, their drainage course or natural flow of watercourses, or

e. otherwise impair attainment of the objectives of this Law.

B. The Town of Middlesex may allow stormwater runoff that is of unacceptable quality or which would be discharged in volumes or rates in excess of those otherwise allowed by this Law, to be discharged into stormwater management facilities off the site of development if all of the following conditions are met:

1. It is not practicable to completely manage runoff on-site in a manner that meets the Performance Standards in Section 9;

2. The off-site drainage facilities and channels leading to them are designed, constructed and maintained in accordance with the requirements of this Law;

3. Adverse environmental impacts on the site of development will be minimized;

4. Adequate provision is made for the sharing of construction and operating costs of the off-site

facilities, and the developer may be required to pay a portion of the costs of constructing the facilities as a condition to receiving approval of the drainage plan;

5. Use of regional off-site stormwater management facilities does not eliminate the requirement that the first-flush be captured and treated on-site pursuant to the Section 9, Performance Standards;

6. A request to use off-site stormwater management facilities and all information related to the proposed off-site facilities shall be made a part of the developer's stormwater management plan.

Section 20: Effective Date

This Law shall become effective on filing with the Secretary of State of New York.

*(incl. Amendment from Local Law #2 of 2008 filed on 2/4/08)
(Local Law NO. 3 of 1999 to be repealed in its entirety.)*

(Rev. 08/05/09)